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Record of the Probate Court of Carson County. U.T.

Hon O. Hyde. Judge.

Henry W Niles S C. Esqr.
Clerk

1855.
Stephen A Kinsey Clk
1856
&
1857

Peter Lovell. Clk
G McNeir. Clk. 1860.

Oct 3, 1855 to July 5, 1856

Case No 1

James McEntyre }
vs } Action of debt and
Asa A Kanun } Damages

Complaint filed Oct 3rd 1855 for $189.75 Copy of complaint and writ ishued on the same day, Returnable on the day set for trial Oct 12th at 9 oclock A M.

Parties met at Owens house on the 12th and proceeded to trial, without a Jury by agreement. Defendant filed his answer and setoff in the sum of $209.25 leaving a balance in his favour of $19.50.

The court on hearing the evidence and the pleas of the parties and on carful examinations of the accounts ordered the Judgment be entered against McEntyre the Plff in the sum of $24.50 together with cost of suit $14.00 making the full amt of Judgment against the plaintiff $38.50

Orson Hyde
Judge

People of the U.S. }
in the Territory Utah }
Vs
Robert Thacker collard

Whereas it appeared to the satisfaction of the Judge in Eagle Valley on the 31st day of October 1855. That language of a highly threatning character had been used by Robert Thacker collard man in relations to the persons of Mrs Jacob Rose

Dismissed
Dismissed at Defendants cost

And A. S. Wyckoff. And to prevent the life of Thacker being taken on the spot. The Judge ordered his arrest. And for the purpose also of holding him accountable for his threatning language on a proper investigation. Subpoena issued Nov 1st 1855 for Jacob Rase. And returned Nov 2d. At 10 oclock A.M of said day the parties wir before the court. And Jacob Rase being duly sworn stated that he did hear the said Robert Thacker say that he had stile enough in his heart against A. S. Wyckoff to kill him. A. B. Cole being duly sworn stated that he heard Thacker say that he could cut Mrs Rase heart out and rost it uppon the coles. It having appeard to the court in evidence that Mrs Rase had detected the Negro in some trifling acts of Petit larceny as the cause of this threatning languaged of the Negro. After duly considering the case the Court said that the languaged used by Thacker in both cases was highly improper but that no direct threat had been made by the Negro according to the evidence. A man may have malace enough at heart to kill another. And judgement and discretion to prevent him from committing the deed He may have the ability to cut a ladys heart out. And rost it uppon the coals. And at the same time he may have good sense enough not to do it

This language therefore can not be construed into direct threats that he would do so and so. or that he intended to do so and so. It was ordered therefore that the prisoner be discharged from further costody at his own cost having been under keepers from the time of his arrest which amounted to fifty Dollars With a recomend from the court that he Thacker goes over the mountains to his Master in California and this to save him from any violence that might be dun him. by the parties threattened

Orson Hyde
Judge.

Jacob H Rose
vs
John Gofsman
Case damadges by attachment:

Nov 5th 1855 Court called at 11 1/2 oclock A M. Case called by the clerk court asked if the parties was ready for trial. Answered in the affermation Deft counsell called for a Jury of six men. Whereuppon the court ordered a venire for that number. writ returned and the pannell called. parties satisfied with the Jury who was duly sworn. The property under attachment was one oxe one Waggon one two year old colt one cow and calf. This property was claimed by Dr Winters under a bill of sale baring date Oct 27th 1855. The property was attached in the hands of Gofman and no proof appeared of it ever having been delivered to Winters

on the bill of Sail. Neather proof of any valuable consideration or just debt as an equivolent. The case was duly argued pro and con and then Submitted to the Jury. The Jury retired under the charge of the proper officer and after two hours deliberation returned a verdict not agreed being equally divided half and half ——
The court therefore discharged the Jury and ordered ~~an~~ venire for ~~a~~ another pannell of Six. — Nov 6th at 10 oclock Venire returned Jury called all present and answered; Deft Counsell rejected two Namely Colo John Keiser and A A Kanion vacancy filled from ~~fm~~ the bystanders by agreement. Both parties satisfied with the Jury. Who was duly called and sworn. A rehearing of the whole matter on ~~and~~ its merits and submitted Jury retired as before in charge of the Officer with papers and documents and after an hours deliberation returned a verdict of no possibility of agreement being divided as before half and half. Whereuppon this pannell was also dissmithed And by consent of parties it was agreed to submit the case to a Jury of three Men who could not hang. The Plff and Deft counsell agreed that each party should choose one Juror and that the court should select the third. Deft choose Rufus A. Adams Plff choose J M Baldwin and the court selected R D Sidis. These Jurors was immediately summonsed called and sworn. Heard the case on its merits wer charged and

Compromised And Settled

retired after an hours deliberation returned a verdict two against one that the bill of Sail to Winters was not a vallied one and that the property held by ~~Gofman to~~ attachment was Gofman Whereuppon the Jury was discharged and the property held subject to the cost thus far, — Next Day Nov 7th Parties met and after 2 hrs deliberation agreed on a compromise the court and Officers and the Plff Attorney having reduced their cost about fifty percent for the sake of a compromise it was agreed to the following That Gofman should pay the entire cost of the suit give three weeks wages to the Plff of himself and wife having agreed to labour for the Plff one year. and only laboured three weeks then broke his contract by leaving the employment of the Plff. Costs after being reduced amounted to One hundred and one Dollars.

Orson Hyde
Judge

Nov 6th 1855. On application by themselves, Dr Charles D. Daggett and S. C Perren, Esqs. were admitted were admitted to the bar as attorneys and counsellors at law; And were duly sworn to support the constitutions and laws of the United States and of Utah Territory and to demean themselves with all fidelity towards both Court and Client This part of the reckord was omitted in its proper place

Orson Hyde
Judge

Hiram Mott
vs
G. N Douglass
{ Case of attachment of ten head of Stock - Nov. 21. 1855

Complaint filed on oath, papers issued and made returnable Nov. 22nd at 10 o'clock A.M. at the House of Doct Chas. D Daggett.

Morning of the 22nd Inst. Officer Fair, in attempting to execute process, met with some indirect resistence or hindrance on the part of Douglass, the defendant. He finally concluded to pay the plaintiff's demand $35.00 and Five Dollars Cost. These sums being duly paid to the officer, the stock attached was allowed to proceed on over the mountains to California, the defendant receipting for them in behalf of alleged owner. The case was therefore dismissed.

Settled by Plaintiff and Costs being paid by Defendant.

Orson Hyde
Judge

Hiram Mott
vs
G. N. Douglass
{ Case Replevin of one Red Steer Calf Nov. 21. 1855.

Complaint filed and papers issued this day, and made returnable on the 22nd at 11 o'clk A.M. at the House of Doct Chas D. Daggetts. Parties met and Court called at the hour. Defendant asked if he could not have the case continued to get evidence from California? The Court answered that if defendant would make oath that he could not safely go to trial without material evidence from California which evidence he believed he could procure, he should have twenty days for that purpose provided the mountains did not close by that time. If they did, he should have until Spring when the mountains opened. The defendant waived this privilege, and said he would proceed to trial. Three positive witnesses on the part of the plaintiff, identifying the Calf by Color, size, age; mark and brand. Defendant also swore positively that the Calf was his - that he bought it of Sparks and knew

Calf delivered to Plaintiff and defendant paid the Cost.

the Calf to be his, defendants, property:
Case duly submitted to Court. Three positive witnesses against one equally positive!
Decision that the Calf might belong to plaintiff, and might belong to defendant: yet Plaintiff produced the greater amount of evidence that the Calf belonged to him, and to him, Mott, the Plaintiff in the Case, the Calf was given at defendant's Cost which was Fourteen dollars ($14.00)

Orson Hyde
Judge

People of the United States
In the Territory of Utah } P — Case
vs } Petit Larceny
Charlie Kensler ——

On complaint of Mark Stebbins under oath, Charging the said Kensler with Stealing about Twelve dollars in Gold dust from the bar of said Stebbins on or before the 26th day of January 1856, and having arrested said Kensler on Suspicion and delivered him into the Custody of Const. Hodge who was ordered by the Court to retain the prisoner for trial. The prisoner consenting to remain in Custody without further Process.

Trial set for next day at Asa Kanions at 2 o'clock P.M. Court and parties duly assembled, the officer returning the venire for the following Jurors:

R D Sides
G. W. Tyler
Warren Smith, both parties being Satisfied with the above named Jurors they were called, sworn and took their seats. After some explatory remarks by

the prosecuting attorney. Chas D. Daggett Esq. The following witnesses on the part of the prosecution were called and sworn: viz

Mark Stebbins
Jacob H Rose
Charlie Sanburn
William McCormick
S. M. Best (Not allowed)
James Mc Martin
H M Hodge (Not allowed)

Witnesses for the defence or accused
B Cherry
Nicholas Ambrosia.

These, all being sworn, were duly examined Pro & Con in their time and place; and after a brief canvass of the Testimony by the prosecuting attorney, and the Story of the prisoner patiently and fully heard, the Jury was charged, then retired and in about 10 Minutes returned the following verdict in writing duly signed.

"Feb. 1. 1856.

We the Jury find the defendant guilty of Petit Larceny and affix the penalty at 6 months hard labor with ball and Chain

Signed G. W. Tyler
R. D. Sides
Warren Smith

Whereupon the Court asked each Juror if that was his verdict in the case. Each one answered in the affirmative. The Court then directed the officer to procure a ball and Chain and attach it to the prisoner and hire him out to hard labor, to the best advantage for the County for the term of six Calender months. Jury dismissed, and Court adjourned

Feby. 1. 1856.

Orson Hyde
Judge

Henry W. Niles, having resigned the offices of Probate and County Clerk of Carson Co. on the 27th Dec 1855. (See resignation on file) Stephen A. Kinsey Esqr. was appointed in his stead on the third day of March 1856. Duly sworn and assumed the duties of said offices of Probate and County Clerk on that day.

Orson Hyde
Judge

Orson Hyde) In attachment
vs (
H. M. Hodges } April 30th 1856

On the oath of Plantiff. a writ of attachment was issued from this Court bearing the above date. against defendant. An absconding debtor. his goods. Chattles rights. Credits and interest. and executed. May 1st 1856 upon the undivided half of Ranch No 2 in Wassau Valley in Carson County. And also upon the one undivided half of a quantity of Cedar rails and timber Cut for rails in the Canon west of said Ranch. for the security and payment of the sum

of debt	88.80
Clerks fees	4.00
Sheriffs "	5.00
Procuring appraisment of property & Judgment	6.00
Advertising order of Court & Sale	6.00
Debt & Costs	$ 109 80

The said Hodges interest in the foregoing premises was appraised at $ 75.00 by Jacob H Rose. Wm McCormick and A. J. Wyckoff. duly sworn on the 3rd day of May 1856 All of Eagle Valley.

See Bill of apraisment on file

Ordered. therefore by the court that Judgement be entered against Hodges. the defendant. his goods. chattles. rights. Credits and interests for the sum of one hundred and ~~Nine~~ Dollars and Eighty cents in favour of plaintiff.

Done May 3rd 1856

Sale ordered on the first Monday in June

Orson Hyde
Judge

The aforegoing premises was sold at private Sale to William Price for the sum of One hundread and ninety seven dollars and eighty cents $ 197.80. And the deed executed to him by the Court. May 24th 1856

Orson Hyde
Judge

County of Carson
vs
H M Hodges

In Attachment

April 30th 1856

On the oath of H. O. Sears. Selectman for Carson County and surety for the said H M Hodges constable. a writ of Attachment was issued from this court bearing the above date. against defendant. An absconded debtor his goods. Chattles. rights. interests and Credits and executed May the first 1856. upon the undivided half of Ranch No 2 in Wassau Valley in Carson County. And also upon the one undivided half of a quantity of Cedar rails and timber cut for rails in the Canon West of said Ranch. for the security and payment of the

sum of debt	69.00
Clerks fees	4.00
Sheriffs "	5.00
Procuring appraisement and Judgement	6.00
Advertising and Sale	6.00
Debt and Costs	$. 90.00

The said Hodges interest in the foregoing premises was appraised at $.75.00 by Jacob H Rose. Wm McCormick and A J Wyckoff. duly sworn on the 3rd day of May 1856 all of Eagle Valley.

See bill of Appraisment on file

Ordered. therefore by the Court that Judgement be entered against Hodges. the defendant his goods. chattles. rights. credits. and interests for the sum of Ninety Dollars $.90,00. in favour of Plaintiff

Done May 5th 1856

Sale ordered on the first
Monday in June next

Orson Hyde
Judge

The aforegoing premises was sold at private sale to William Price for the sum of one hundred and ninety seven dollars and eighty cents $.197.80 May 24th 1856 and deed executed by the Court.

Orson Hyde
Judge

Jonathan Reese
vs.
E. H. Knott
R. D. Sides
Bowlin Abernithie
J. M. Baldwin and
others

In case of Trespass
Norton & Brumfield. for Plaintiff and
Perrin & Hall for the defence

Complaint filed by Plaintiff May 22nd 1856 and returned 23rd at 10 O'clock A.M. Defence not having filed their answer, asked for an adjournment of four weeks to procure witnesses from California &c.

The court ruled that the defence should file their answer, after which upon proper showing they might obtain an adjournment. Court then adjourned till one O'clock P.M. to allow the defence time and opportunity to file their answer.

Court met pursuant to adjournment at one O'clock P.M. Answer was duly filed, and no demurrer thereto. Affidavit by the defence offered to procure an adjournment to obtain witnesses from California. The affidavit being materially defective, the Court ruled that the defence ~~might~~ make a new one, which was presented; and after some amendments of the affidavit and also some amendments of the answer, the Court granted an adjournment of Twenty days, To wit, until the 12th day of June. By consent of defence the Plaintiff was allowed to amend his complaint by inserting that "an order of Court be issued to eject the parties from said premises by such unlawful holding".

The Court here remarked to both parties that they were at liberty to take all the time they required to alter or amend their papers to suit themselves, for after this day, no further alteration would be allowed by the Court.

All the amendments were made that were asked for. The Court then remarked that it had allowed the case to take a liberal range, contrary to the wishes of the Plaintiff's counsel, but that hence forth the case would be confined within the strict compass and limits of the Law.

Court then adjourned to the 12th day of June 1856 at 10 O'clock A.M. and the parties reminded to take

Over

due notice and govern themselves accordingly.

Costs,

Clerks fees	10.00
Court "	10.00
Sheriffs "	8.00
	28,00

In consequence of the threatening and hostile attitude assumed by the defence, the Court thought proper to issue an order to summon a posse of well disposed Citizens, as a precautionary and prudent measure to repel any violence that might be offered; whereupon the following named persons were duly summoned and responded to the same.

J. Hollinshead
E. Merilley
John Casto
Enoch Reese
John Reese
W. Fredrick
H. Mott
J. Mott
Wm Cofer
J. A. Kinsey
E. L. Daggett
A. Mead.

Sheriffs fees for summoning Posse on the above order	$. 17.00
Attendance of posse $. 3.00 each	36,00
Sheriff attendance at Court	5.00
	$. 58,00

Orson Hyde
Judge

Same continued

June 12th 1856. 10 Oclock A.M

Court met pursuant to adjournment and took a recess of one hour to allow the defence to get ready and appear. Court reopened all parties present. defence called for a Jury of twelve men. The court then adopted the following rule by consent of Attorneys on both sides. That the party demanding a jury deposit the fees to which they are entitled and the party rejecting any Juror thus empaneled pay that Juror the same as if he had acted as Juror in the case

Venire issued and the court charged Sheriff to select Judicious men not particularly in the interest of either party. Court adjourned until 3 Oclock P.M.

Court met pursuant to adjournment and the Sheriff returned venire with the following names

H. Jacobs
John McBride
A A Parker
C E Hollbrook
J. S. Childs
B Cary
W. T Williams
W. B Wade
L. Mines
T. Morgan
H. Vansicklen
L. Olds.

Plaintiff preemptorily rejected Hollbrook and Olds and paid them two dolls each, defendants next rejected Mines and Vansicklen, to fill the panel W. B Thorington W. Fredricks John Shutts and Hiram Mott. defence then rejected W. B Thorington. C. Merkley summoned in his stead and also rejected by the defence. Albert Mead summoned to fill the panel Jury being sworn and charge by the Court to hold no conversation with any person touching the merits of this case during adjournment. Court adjourned to meet at nine Oclock A.M. Friday June 13th 1856

Orson Hyde
Judge

Cost in the above case on the 12th of June as per bill on file $15.50

Orson Hyde
Judge

Over

Same continued

Court met pursuant to adjournment June 13th at half past nine A.M.
On motion of defence to exclude some of the Jury. Court ruled that the Jury had been passed upon and duly sworn that they could be not retraversed. John Reese. Russel Kelley C. Sanborn. H. Vansickel and Dr C D Daggett, were called to the stand and duly sworn as witness for the plaintiff.

Court ruled that questions which were ~~improper~~ impossible for witness to answer were improper questions, and should not be put.
Defendants, then called John Reese as their witness.

On motion to adjourn for dinner court charged the Jury to hold no conversation with any person about this case during the time of adjournment. Then adjourned till 2 O'clock P.M.

Court reopened at two P.M. all parties present.

Question. By the plaintiff to Mr Kelley
How much per day were you to pay Mr Fredricks to work on the mill.
Defence objected to the question.

Court ruled that question having an approximate or relative bearing upon the damages may be put and the answers go to the Jury for what they are worth.

A L. Kenyon. B. Cole. W. Smith. W. P. Allen John Cary and B. L. King. called to the stand as witness on the part of defence.

Defence then introduced an instrument purporting to be a mortgage or lein on the mill. Plaintiff objected to its going to the Jury.

Court ruled that the instrument was not executed according to the requirements of the statutes and was not known to the court as a legal document and that it could not go to the Jury.
The plaintiff, by order of the defendant, then put in a conditional transfer of the mill from Reese & Co. to Knott which the plaintiff claimed he had paid and taken

up. But this being equally faulty with the other even if it had not been tried must share a similar fate.

Here the examination closed, and the Attorneys wished to know the order of proceeding.

Court ruled that as many Attorneys might speak on a side alternatively as chose, provided there was not an extravagant number, and that the defence might have the closing speech.

This order of procedure contended for and urged by the defence upon the letter and spirit of the statue objected to by the plaintiff but the objection overruled by the Court.

Whereupon Col. A. L. Norton opened the argument for the ~~defence~~ plaintiff, followed by Mr. Perrin on the part of defence. Mr Bromfeild for the plaintiff was expected to follow Mr Perrin, and the closing argument for the defence by Judge Hall. But contrary to the expectation of Court and Jury Mr Bromfeild declined speaking after Mr Perrin and it not being within the province of the court to compell Mr Bromfeild to make a speech according to previous ruleing. Judge Hall was prevented from closing for the defence.

And here the argument rested. Case submitted to the Jury who was charged and instructed to return a sealed verdict next morning at 10 Oclock A.M. if they could find one by that time.

Court adjourned next day the 14th at 10 Oclock A.M.

~~[illegible]~~

Defendants objected against the ruling of the court prohibiting the papers going to the Jury purporting to be a mortgages agreed to by both parties.

Orson Hyde
Judge

Cost in the above case on the 13th of June
~~as~~ per bill on file $112.50

Orson Hyde
Judge

Over

Same continued.   June 14th 1856

Court met at 10 A.M. all parties present - Records of the proceeding day read and approved. Jury called and rendered their verdict of which the following is a copy

Jonathan Reese }
vs } We the Jury find for the plaintiff
~~H~~ Knott & others } and damages at ten dollars per day for six days.

Genoa June 13th
(Signed) A A Parker
Foreman of Jury.

The verdict being read the plaintiff presented a written notice of appeal to the Court accepted by the defendants - Jury discharged and court adjourned sine die. Soon after the adjournment the notice of appeal was withdrawn by the plaintiff's counsel

Cost of this day's proceedings as per bill on file $77.00

Orson Hyde
Judge

Same Continued   June 19th 1856   5th day

Jonathan Reese }
vs }
Knott & Others } Defendants asked leave to give appeal bonds upon payment of cost which the court granted and fixed the amount of bonds at six thousand dollars, to all which the plaintiff excepted. First because the defendants did not claim the right of appeal on the day of rendition of the verdict. Second from the former ruling of the court that parties wishing an appeal must file the bonds within five days which time had expired This ruling was confined to the special act of ejectment.

Orson Hyde
Judge

Same continued   June 19th 1856

Jonathan Reese
vs
Knott & others

Court ruled that in consequence of the Judge being absent one of the five days allowed the defendants for giving up the mills, under the ejectment act it would grant untill the 20th of June, at 12 Oclock M. to perfect the terms of appeal, or submit to an order or writ of ejectment, and no longer, to which the counsel for the defence agreed, and promised to comply with the terms of appeal forth with.

Cost of this days proceeding as per bill on file $20.00

Orson Hyde
Judge

July 4th 1856 Writ of restitution or ejectment iſsued against the defendants and was placed in the hands of Ruſsel Kelly, sheriff of the county, returnable in 20 days.

Cost of writ $2.00

Execution iſsued this day July 5th 1856 for Judgment and costs for the foregoing suit of Jonathan Reese vs Knott & others for the sum of Four hundread and fifty four dolls ($454.00)